No. 12273

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

SOUTHERN CALIFORNIA RETAIL DRUGGISTS ASSOCIATION, LTD., a non-profit corporation, etc., *et al.*,

Appellants,

vs.

RETAIL CLERKS UNION, LOCAL No. 770, an unincorporated association, etc., *et al.*,

Respondents.

APPELLANTS' OPENING BRIEF ON APPEAL.

J. WESLEY CUPP,
440 Subway Terminal Building, Los Angeles 13,
Attorney for Appellants.

Parker & Company, Law Printers, Los Angeles. Phone MA. 6-9171.

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Facts.

This action was filed by the Retail Druggists Association of Southern California, representing several hundred druggists in this area, in conjunction with two druggists of that association and with two pharmacists and two student pharmacists employed in certain member drug stores.

The action is one for declaratory relief seeking an interpretation of a certain standard type contract or collective bargaining agreement which was presented to certain drug store proprietors by the respondent labor union, which provides that *pharmacists* and *student pharmacists shall be treated as non-professional employees* for the purposes of collective bargaining. In order to construe the contract, it is necessary to construe certain pertinent provisions of

the Amended National Labor Relations Act. The pharmacists and student pharmacists maintain that they are professional employees as defined under Section 12 of the Labor Management Relations Act of 1947, and are thus entitled to a separate bargaining unit. The union asserts that the pharmacists are non-professional employees under the Act and thus are not entitled to a separate bargaining unit. The employers, being represented by the Association, assert that if they sign said collective bargaining agreement with the respondent union, which union has not been certified as a collective bargaining agent for the employees or pharmacists, nor can they be so certified until they file the required documents and affidavits under Section 9 of the Labor Management Relations Act, it will constitute a violation by the employers of the Act, since the effect would be to coerce the pharmacists into joining a non-certified labor organization against their wishes and without an election, and without their rights of self-determination as provided for by said statute. Thus, the employers assert that the collective bargaining agreement is illegal and invalid in its entirety, and are here asking for an interpretation thereof.

The United States District Court, Southern District of California, Central Division, with Honorable Benjamin Harrison presiding, held that the District Court had no jurisdiction over the subject matter, *i. e.,* it apparently held that the appellant had not exhausted its remedies before the National Labor Relations Board. The court gave no grounds whatsoever to sustain its judgment, other than the foregoing finding and conclusion.

Thus, this appeal is taken by the Association, the employers and the pharmacists contending that they have no

remedy before the National Labor Relations Board since it is not the function of the Board to interpret a collective bargaining agreement, except in conjunction with an unfair practice charge, and, if we may rely on National Labor Relations Board precedent, there has been no unfair practice committed in the instant case.

The question before this court, stated concisely, is:

> "May the District Court of the United States exercise jurisdiction in a matter involving labor relations which affect interstate commerce where there is an actual controversy and NO remedy before the National Labor Relations Board as established by the Congress of the United States?"

The brief shall be controlled by thorough examination of the following major premises affirming jurisdiction in this court:

1. There is no remedy before the National Labor Relations Board provided by the Labor Management Relations Act of 1947.

2. This is an action that is equitable in nature, and unless specifically excluded from the jurisdiction of this court, then jurisdiction will attach.

3. Unless by the nature of the action, as set out in premise No. 2 above, the court is precluded from jurisdiction, every requisite element for jurisdiction in the Federal Court is present, to wit: An actual controversy, interpretation of a federal statute and hence a federal question, and the requisite jurisdictional amount.

4. There is certain inherent jurisdiction, even in a court of delegated powers, and this is a case which by nature involves the said inherent jurisdiction.

I.

There Is No Remedy Before the National Labor Relations Board Provided by the Labor Management Relations Act of 1947.

The Labor Management Relations Act of 1947, commonly known as the Taft-Hartley Act, and hereinafter referred to as the "Act," provides certain means and sets up certain requisites for application to the National Labor Relations Board, hereinafter referred to as the "Board," for relief from certain enumerated unfair labor practices.

The provisions of the Act that are pertinent to the discussion of this issue are:

Section 9(c)(1)(A) and (B): Which in substance provides that either a labor union or an employer may file a petition for an election;

Section 9(f)(g) and (h): Which provides that the union must file certain affidavits before it can file said petition for an election, and before the union can file a charge for unfair practices;

Section 10(h): Which nullifies the effect of the Norris-LaGuardia Act;

Section 8(b)(1) and (2): Which provides that it is an *unfair labor practice* of a *labor union* to coerce employees in the exercise of the rights guaranteed to them under Section 7, or to cause an *employer* to discriminate against employees in violation of Section 8(a)(3);

Section 7: Which provides that employees shall have certain rights, to wit: self-organization, to bargain collectively through representatives of their own choosing, and the right to *refrain* from all such activities except that as

such right is affected through an agreement requiring membership in a labor organization under Section 8(a)(3); and

Section 8(a)(1): Which provides that it is an unfair labor practice of an EMPLOYER to coerce employees in the exercise of their rights guaranteed to them under Section 7 and Section 8(a)(3), which provides that it is an unfair labor practice of an *employer* to *encourage* membership in a labor organization by entering into an agreement with a non-certified labor organization;

Section 9(b)(1): Which provides that the Board shall not decide that any unit is appropriate for such purposes if such unit includes *both professional employees and non-professional employees, unless a majority of such professional employees vote for inclusion in such unit.*

It should be noted at this point that the unions with which these petitioners are involved in controversy have not filed any of the reports or affidavits required by Section 9(f)(g) and (h).

Three steps are necessary to show that the petitioners herein have no adequate remedy, either before the Board, or before any other court:

(1) The fruitless attempt of employer to compel an election under Section 9 of the Act.

(2) The fruitless attempt of an employer to obtain relief in a state court.

(3) The fruitless attempt of an employer to file a charge of unfair practices against the union.

The first two of these propositions can be illustrated by showing the trials and tribulations of Nathan A. and

Lillian Simons, member drug store owners of the appellant Association.

Mr. Simons was presented with the same collective bargaining agreement as is in controversy in this action by the respondent Retail Clerks Union Local No. 770. Simons knew the position of his pharmacists and knew that the union had not filed the required documents with the National Labor Relations Board. He was afraid to sign the contract for fear that he would be charged with an unfair practice by the pharmacists or other persons, and yet he desired industrial peace. Therefore, he went to the National Labor Relations Board, Case No. 21-RM-24 (1948), and filed a petition to determine whether the union which had demanded recognition was the proper bargaining unit to represent his employees. (This was a petition for an election under Section 9(c)(1)(B), noted above.) However, the Board dismissed the petition on the ground that they had no jurisdiction, due to the failure of the union to file the required documents under Section 9(f)(g) and (h) of the Act, the opinion being handed down by Howard F. LeBaron, Regional Director, on the 10th day of June, 1948. Thus, a petition for an election does not afford any remedy for the appellants whatsoever. Also see *Herman Lowenstein, Inc.,* 75 NLRB 277. Teller on Labor Disputes, 1948 Supplement, page 116, paragraph 398.13, which held that an employer could not file a petition for certification against a non-complying union. By express provision in the Act, of course, a non-complying labor union cannot petition for an election.

Secondly, the local union began picketing Mr. Simons' little drug store. He couldn't get supplies; he lost many

customers and considerable trade. So he turned to the courts of the State of California to see if he could obtain an injunction. The Superior Court, with Judge Hanson writing the decision (CCH 14 Labor Cases, par. 64,465), granted an injunction against the picketing on the ground that it constituted unlawful coercion and there was no remedy before the Board since it was a non-complying or "outlaw" union, in the words of Judge Hanson. However, the Supreme Court of California reversed the lower court in the matter of *Joseph T. DeSilva*, 199 P. 2d 6 (1948), (rehearing denied; which opinion is attached hereto; the action was taken up on habeas corpus since the union immediately violated the injunction), on the ground that the Federal Government had preempted the field of labor relations—that the employer had not exhausted his administrative remedy—to wit: Filing an unfair labor practices charge against the union with the Board. Filing the petition for election and certification did not exhaust all the remedies.

It is conceded by the appellants herein that Simons had probably not exhausted his administrative remedy in that situation since there is no decision holding that an employer cannot file an unfair practices charge against a non-complying union, as distinguished from a petition for an election. *There an unfair practice was being committed, to wit:* Coercion *in the physical form of picketing to compel the employer to encourage membership in a labor organization by signing the disputed contract in violation of Section 8(a)(3) of the Act, which is an unfair practice of a labor union under Section 8(b)(2).* However, it has been subsequently held, both in Wisconsin and New Jersey, that in SUCH A SITUATION AS EXISTED IN THE

"SIMONS CASE," AN UNFAIR LABOR PRACTICE ACTUALLY EXISTING, THAT THE EMPLOYER MAY PURSUE INJUNCTIVE RELIEF IN THE STATE COURTS. (*Rice & Holman v. United Electrical Workers,* CCH 16 Labor Cases 65,087; *Int'l Union UAW-AFL, Local 232, v. Werb,* CCH 16 Labor Cases 64,992.) *But it is not contended by appellant, nor was it shown by respondent or the Honorable District Court, that any unfair labor practice has, at this time, been committed so as to enable petitioners to go before the Board or again petition the state courts for a redress of grievances.* It is further contended by the appellants (which point the California Supreme Court failed to discuss and which is alleged and prayed for in the complaint in this action) that coercion by picketing to compel an employer to sign a contract with a union that has not filed the proper documents and affidavits, which contract is against the wishes of the employees, also compels the employer to coerce employees in the exercise of their rights under Section 7, which is an unfair practice of an *employer* under Section 8(a)(1) but IS NOT *an unfair practice of a labor union and thus* NO CHARGES AT ALL *can be filed against the labor union* under the Labor Management Relations Act.

To further accentuate the lack of remedy before the National Labor Relations Board, appellants refer to the recent decisions of the Board as pertaining to small businesses:

> "Upon these facts, which are not contested, the Trial Examiner concluded that the employer was engaged in commerce within the meaning of the Act, and that the respondent's (Union's) activities had a close, intimate and substantial relation and tended to

lead to labor disputes burdening and obstructing commerce. It is clear to us, however, that the employer's business is essentially *local in nature* and *relatively small in size* and that the interruption of his operations by a labor dispute could have only the most remote and insubstantial effect on commerce. Recently we have dismissed several proceedings involving such enterprises, on the ground that the assertion of jurisdiction would not effectuate the purposes of the Act.

. . .

"Under Section 10 of the Act, as amended, the Board is 'empowered' to prevent any person from engaging in any unfair labor practice 'affecting commerce,' *but it is not directed to exercise its preventive powers in all cases.* . . ."

H. W. Smith, dba A-1 Photo Service, Local 905, Retail Clerks International Ass'n, AFL, 83 NLRB No. 86, Case No. 21-CB-34, May 13, 1949—reported at Labor Law Reports No. 8921.

See also:

Perura Studio, Portrait and Commercial Photographers and Photo Finishers Union, No. 24244 AFL, 83 NLRB No. 87, Case No. 21-CA 68.

The holding of the Board in the above cited cases only serves to further demonstrate the complete and total lack of remedy of the small businessman when he is embroiled with a large and aggressive labor union. While the Act appears to protect the small business person, as well as the large, it affirmatively appears that the Board may, at its discretion, *leave the small investor to work out his own*

fate as best he can. Such is the position of these petitioners. Each is presented, individually, with a labor contract. As demonstrated in the "Simons' case," *infra,* the small employer is at a complete loss to effectually combat such a powerful union, and each small employer can be easily forced into violation of the Act, as shown above.

Are these relatively small business people to be told, by this high and respected judicial body, that the purpose of the Taft-Hartley Act, and other labor legislation, was passed purely for the benefit of "big business" and "large labor unions"? Are these petitioners to be told that because their individual yearly gross is not in the million dollar category that they are precluded not only from the relief of the Board, but from the use of their own duly constituted courts? *In short, is there a dollar sign on justice*? Petitioners respectfully submit that such is not the position of this, or any other, court of this nation.

Then can it be said, within a reasonable construction of the English language, that these petitioners have not exhausted what was thought to be their remedy before the National Labor Relations Board? Is this instead not a situation where a union, by simply refusing to comply with the terms of the Act, successfully removes itself from jurisdiction of the Board, and attempts, by such process, to deprive its adversary of *any* remedy, contending that regardless of the employer's inability to seek relief before the Board, said employer is still precluded from any relief from our judicial bodies? Petitioners submit that this is precisely what respondents seek to do.

Respondents have submitted the previously mentioned contract to certain members of the Druggists' Association,

and asserts that it will present such a contract to each, every and all members, and that pressure will be brought to bear to force the employers to sign such contracts. Respondent unions contend that they have the right to insist upon these contracts, that the signing of such contracts, even though with a "non-complying" and "non-certified" union, would be valid. Petitioners insist, and it is submitted that they rightly do so, that the unions have NO right to present such a contract, that an entry into such contract would constitute petitioner guilty of an unfair labor practice, and that respondent unions have no legal power to FORCE PETITIONERS INTO A VIOLATION OF THE NATIONAL LABOR RELATIONS ACT.

If there be any doubt in the mind of the court that a pharmacist is not a professional person, and a professional employee within the scope of the Act, it need but refer to the following reports from the National Labor Relations Board. The first report to be cited sets up the following:

> *"Definition:* Section 2(12). Registered pharmacists employed at proprietary drug counters in department stores, as well as registered pharmacists employed in the prescription departments of the stores, *are professional employees within NLRA*.....64,557.
>
> "Unit Appropriate: Section 9(b). Registered pharmacists employed both at proprietary drug counters and in the prescription departments of the department stores, may, if they so desire, constitute a separate unit notwithstanding their previous inclusion in

a broader unit inasmuch as they are professional employees within NLRA 64.557-65.77." (Emphasis ours.)

Sam's Inc., 78 NLRA 104, 22 LRRM 1271.

Then, in the later NLRB decision cited below, the Board again reached an affirmative decision *in re* professional employees:

"Definition—Professional employees—Section 2 (12).

"Biological products manufacturing plants' *chemists,* chemical engineers, bacteriologists, biologists, and physicists are professional employees within the amended NLRA 64.563-64.557.

"Unit appropriate Section 9(b). Biological products manufacturing plants' professional employees may be severed from plant wide unit for purposes of decertification election. 64.563-64.557-65.16." (Emphasis ours.)

In re Cutler's Laboratories, 80 NLRB 44, 23 LRRM 1077.

Thus it is shown that the Board has readily recognized pharmacists to be included within the definition of the Act as to professional persons *in a case where the problem could be put properly before it.* And having recognized the pharmacist as a professional person, there can be *no* doubt but that an employer would be held guilty of an unfair labor practice if he signed an agreement which forced such professional employees into a group composed of both professional and nonprofessional employees. It is

apparent that the *ultimate and nefarious purpose* of this union is to throw the burden of a violation of the Taft-Hartley Act upon the employers here petitioning for relief. By placing its entire economic and physical pressure upon the employer, thus leaving the employee group free from immediate restraint and free from any necessity to petition the Board (assuming without admitting such a petition would be heard), the respondent unions have placed themselves beyond the power of the Board to act. The union can force the employer into a violation of the Act by forcing this agreement here in issue upon employer, thus causing employers to *arbitrarily* force the professional employee into a *union not of his own choosing.* It is submitted that this power to force another person into violation of the laws of our nation is not a power which can, or will, be sanctioned by our courts.

Having, then, NO remedy before the National Labor Relations Board, must each of some several hundreds of employer druggists, and each of further hundreds of professional employee pharmacists, wait until an unfair practice is committed, until each has suffered irreparable damages, before he may, *in an individual* suit, pursue *some* remedy for his grievances? It is respectfully submitted that the answer must be, and is, an unqualified NO.

It has been shown that petitioners have no remedy before the Board, and that our state court (California) has refused jurisdiction. It has been further shown that upon failure of this court to declare the rights of the parties

herein, that hundreds of *identical* suits must be brought, and these suits *after the incurrence of irreparable damages*. Such a multiplicity of suits in itself presents a further reason, and a more impelling one petitioners could not point out, why this court should take jurisdiction.

Finally, the court should give serious consideration to what relief petitioners might avail themselves, if that remedy be not in declaratory relief. It should be ever in the court's mind that the employers who are represented by the petitioning Association *have not, nor have they ever, resisted the rights of their employees, professional or non-professional, to organize for purposes of collective bargaining.* These employers, to the contrary, are but making every effort to see that their employees are protected, as such employees have repeatedly shown their desire to be separated in regard to collective bargaining purposes, and to prevent these respondent unions from forcing said employers into violation of the Taft-Hartley Act.

Having shown the lack of a remedy before the Board for these purposes, petitioners proceed to their second major premise in support of the court's jurisdiction in this matter.

II.

This Is an Action Equitable in Nature, and Unless Specifically Excluded From the Jurisdiction of This Court, Jurisdiction Will Attach.

By Section 41 of the Judicial Code, subsection (1), as derived from Acts of March 3, 1911, Chapter 231, etc., the United States District Courts were given jurisdiction over suits of a civil nature, at common law or in EQUITY, setting out further jurisdictional requirements which have either already been mentioned herein, or will be mentioned subsequently. This section is cited as Title 28, Judicial Code and Judiciary 41(1). By Act of June 25, 1948, numbered Public Law 773, Chapter 646, and entitled "An Act to revise, codify, and enact into law Title 28 of the United States Code entitled 'Judicial Code and Judiciary,'" this said revisal and codification was accomplished. However, it should be noticed and remembered that there is no mention made, or intent shown, to diminish or enlarge the equitable jurisdiction of the federal courts, but merely to revise and codify. Nor has it been shown by any subsequent case testing the jurisdiction of the courts that any diminishing or enlarging was contemplated.

To the contrary, the equitable jurisdiction has remained the same, and while it is acknowledged that the federal courts are courts of limited jurisdiction, IT IS SUBMITTED THAT THEIR EQUITABLE JURISDICTION IS GENERAL JURISDICTION, as is attested to by the following quotation and cited case:

> "Section 11 of the Judiciary Act of 1789, 1 Stat. 78, provided that the circuit courts should have 'cognizance * * * of all suits of a civil nature at

> common law or in equity' in cases appropriately brought in those courts. This provision is perpetuated in Section 24(1) of the Judicial Code, 28 U. S. C. 41(1), 28 USCA 41(1), which declares that the district courts shall have jurisdiction of such suits. The 'jurisdiction' thus conferred on the federal courts to entertain suits in equity is an authority to administer in equity suits the *principles of the system of judicial remedies which had been devised and was being administered by the English Court of Chancery at the time of the separation of the two countries.*"
>
> *Atlas Life Ins. Co. v. W. I. Southern, Inc.,* 306 U. S. 657, 59 S. Ct. 657.

And again in *Meredith v. City of Winter Haven* the court lays down the well established maxim:

> "An appeal to the equity jurisdiction conferred on federal district courts is an appeal to the sound discretion which guides the determinations of courts of equity."
>
> *Meredith v. City of Winter Haven,* 64 S. Ct. 7.

It must be conceded that the equity jurisdiction of our federal courts is a general jurisdiction, and to be accorded to each plaintiff in line with the general principles of equity unless specifically precluded by some act or statute of the Congress of the United States.

Appellant proceeds, then, to these issues: (1) Does the National Labor Relations Act preclude the Federal District Courts from any original jurisdiction under any circumstance over the subject matter; and (2) if the District Court is not specifically precluded from taking jurisdic-

tion, may the said court, in exercise of its judicial discretion in equity, take equitable jurisdiction in the instant case?

It is plain that the Congress intended to channel the complaints of the private individual through the National Labor Relations Board in certain instances. However, those instances are set out in the Act, and inasmuch as the Taft-Hartley Act is an amendment to the Wagner Act, it may be construed to change only those provisions of the Wagner Act that are expressly changed. Section 10 of the amended Act sets out specifically those instances in which the private individual must pursue his remedies through the Board. The governing language of the Act is:

> "Section 10(b), 'Whenever it is charged that any person has engaged in or is engaging in any such *unfair labor practice,* the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days before the service of said complaint.'" (Emphasis added.)

It is readily apparent that such is not the purpose of this action, that no injunctive relief is being sought, that there is here no attempt to enjoin the defendants from any unfair labor practice, but to the contrary, that this is an action "seeking a Declaration of Rights, and an avoidance of liability, all within the ambit of the 'Declaratory Judgments Act.'" NOT ONLY ARE PLAINTIFFS OUTSIDE

THE SCOPE OF THE NATIONAL LABOR RELATIONS ACT, BUT AS SHOWN IN PREMISE ONE, NO POWER TO GOVERN THE PRECISE SITUATION HERE INVOLVED WAS CONFERRED UPON THE NATIONAL LABER RELATIONS BOARD. No other conclusion may be reached, then, but that Congress did not intend to preclude the private individual from the pursuit of his remedies through the courts other than in those specific instances enumerated in the provisions of the Taft-Hartley Act.

From that conclusion we are led, then, into the answer to the second question presented above, to wit:

> "If the District Court is not specifically precluded from taking jurisdiction, may the said court, in exercise of its judicial discretion in equity, take cognizance of and confer jurisdiction upon the issues here presented by these petitioners?"

At this point, petitioners would once again like to recall to the attention of the court that this is an action for "Declaratory Relief" and, while governed by statute and the terms of the Judicial Code, it is nevertheless *"sui generis,"* or, in brief, "equitable" by nature, and within the sound discretion of the court as to its being granted or refused, PARTICULARLY WHERE THE NATURE OF THE CAUSE OF ACTION PARTAKES OF EQUITABLE PRINCIPLES. It is conceded that an action for declaratory relief need not, necessarily, be equitable, but it is equally contended that such an action may partake of the nature of an action in equity, and it is so contended here. It has been so held in many instances by this court, as witness the following line of cases:

"Plaintiffs correctly argue that a declaratory judgment suit is not a suit in equity. It does not logically follow however that certain equitable principles are without application in such suits. Such suits partake of the nature of both legal and equitable proceedings. It is usually denominated as *'sui generis'* to indicate it is neither purely legal nor purely equitable. The true rule, I apprehend, is that when the proceedings partake of the nature of equity, it calls into play appropriate equitable principles."

Buromin Co. v. National Aluminate Corporation, 70 Fed. Supp. 214, 216.

The Declaratory Relief Statute was similarly construed in the following case:

". . . The law created no new substantive rights or legal relationships but added to the *remedies* previously existing, an additional one for relief in the form of a judgment declaring, in cases of actual controversy, the rights of the parties. Though such relief was *inherent* in some situations previously, the statute extended the propriety of the procedure greatly, with the obvious intent to avoid delay and accrual of damages against one uncertain of his rights and to promote *an early adjudication* of the controversy between the parties without *waiting until one of them should see fit to begin suit for coercive relief after damages had accrued.* True it is that plaintiff might not invoke the court's jurisdiction in a suit to recover Two Thousand Dollars ($2,000.00) in money, *but this suit is for other relief;* it is in the nature of a suit to quiet title, by which equity juris-

diction is invoked in order to secure a decree of non-existence of apparent clouds upon one's title. *So, here, plaintiff seeks to have the court remove any doubt as to the validity of the contract. In such a situation to exercise jurisdiction under the Declaratory Act is not to extend the jurisdiction of the court but merely to hasten the day when that jurisdiction may be invoked. . . .*" (Emphasis added.)

Davis v. American Foundry Equipment Co., 94 F. 2d 441.

Referring again to the fact situation at hand, it is clearly shown that appellants' situation is very much the same as that in the above cited case. Here, there is a request that the court interpret a contract which the appellants are told they must sign. As before stated, appellants believe that if they are forced to sign such a contract in an attempt to prevent irreparable damages along one front, they will be forced into a violation of the Taft-Hartley Act, by which they may incur not only punitive action by the National Labor Relations Board, *but civil damages by employees against whom they have been forced to commit an unfair labor practice. Appellants respectfully submit that even if we assume an action could be brought by these appellants before the National Labor Relations Board, that action could in no way relieve the employer, individually or collectively, from liability in any civil action brought by the employees, an action which accrues to them by virtue of the terms of the National Labor Relations Act. And since the National Labor Relations Act is the source of the right of the employees to maintain such a civil suit, it is clear that the jurisdiction of such*

suit resides solely in the District Courts of the United States. If the employer is to be brought before this Court to answer for any liability incurred by virtue of the terms of the National Labor Relations Act, it follows that this is the proper court to hear an action in Declaratory Relief flowing from that portion of the Act pertaining to the right of the employee to maintain a civil suit for damages.

In further support of the foregoing citation, and argument of petitioners, the following citations are submitted:

> "The Rules of Civil Procedure for the District Courts of the United States, in Rule 57, 28 U. S. C. A. following section 723c, which provides 'the existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate.' . . . The conclusion of the District Court that the bill must be dismissed because the Declaratory Judgment Act comprehends situations only where the plaintiff seeks to establish a right and not those wherein he seeks to escape liability, is founded upon a misconception both of its terms and purpose. . . . *its purpose is to provide a remedy to the challenger of a right, who otherwise could not have his challenge adjudicated until his adversary took the initiative.*" (Emphasis added.)
>
> *Employer's Liability Assur. Corp. Ltd. v. Ryan,* 109 F. 2d 690, 691.

Then again the following language of the court is particularly in point, to wit:

> ". . . The report of the Judiciary Committee of the Senate states that there is a discretion under

the statute not to issue the judgment if it will not finally settle the rights of the parties and, further, *that while the procedure is neither distinctly at law or in equity, but sui generis, the Supreme Court could probably* at any time make rules under its equity power, if it saw fit. . . . As said by Judge Knight in the case of Automotive Equipment Co. v. Trico Products Corporation, however, the discretion to grant or refuse the declaratory relief is a judicial discretion, and must find its basis in good reason, and is subject to appellate review in proper cases. We think that this discretion should be *liberally* exercised to effectuate the purposes of the statute and thereby afford relief from uncertainty and insecurity with respect to rights, status and other legal relations (See Borchard, Declaratory Judgments)." (Emphasis added.)

Aetna Casualty and Surety Co. v. Quarles et al., 92 F. 2d 321, 324.

". . . The Declaratory Judgment Act, 28 U. S. C. A. 400, we think, affords complainant a complete remedy. Under that Act, if there is a reasonable dispute between the parties as to application and interpretation of an Act of Congress or administrative order, either party has a right to resort to the District Court in an application for declaratory judgment. . . . The complainant need only show that his position is jeopardized by the statute, regulation, or order, and thereupon the court will afford relief from any uncertainties with respect to his rights. He is not required to wait indefinitely. The proceed-

ing has the advantage of escaping any technical distinction between law and equity and enables the court to reach the desired goal in the speediest and most inexpensive form. . . . Here, then, is congressional provision for a hearing at which complainant may have his rights determined by a court *endowed with jurisdiction.*" (Emphasis added.)

Gordon v. Bowles, Price Administrator, 153 F. 2d 614, 615, 616.

The import of the above cases cannot be escaped. Cases following the same reasoning and judicial line of thought are too numerous to set out in complete detail. The elements of declaratory relief, as presented in the above cases, and many others, are all present here. Appellants find themselves confronted with an Act of Congress that specifies certain things that appellants may not do, and in addition specifies certain things that appellants' adversary may not do. In addition, the Act enumerates certain instances in which a petitioner may not pursue his rights in the regularly constituted courts of the United States. All these things have been presented to the courts in the cases cited above, except that this "particular act of Congress has not been brought before the court on this question and on this type of factual situation." It cannot be doubted that an actual controversy is presented here, a controversy in which the two parties have placed different interpretations upon an Act of Congress, and upon a contemplated contract, and that appellants are faced with the dilemma of being forced into a violation of the law, a violation which appellants wish to prevent, and thereby seek this declaration of its rights and liabilities before this court. *Petitioners do not ask for a mere advisory*

opinion; they ask for a declaration of rights pertaining to their being compelled into a violation of an Act of Congress.

It thus can be seen that petitioners' cause presents all the long established requisites of equity, *i. e.,* NO adequate remedy at law, irreparable damages which will be suffered if respondents be given the time and the opportunity to coerce and compel appellants to comply with their demands, plus the futility of attempting to proceed with any bargaining as long as the status of employees is in doubt, *and the interpretation of the Act of Congress in question is in such complete and hopeless conflict* between the parties. And further, an untold multiplicity of suits will result if each appellant is compelled to wait until an unfair practice has been committed against him.

It has been, we think, clearly shown by these appellants that while an action for Declaratory Relief is not purely equitable, it is equitable in nature, and that it is purely within the discretion of the court to grant or withhold the remedy. It is shown that there is more than a monetary amount in question here, and that the question presented is of great and pressing concern to the public, as well as to the appellants. As shown in premise number one, the appellants have exhausted their remedy before the National Labor Relations Board; that, in fact, there was and is *no remedy* in the factual situation which confronts us here, and it is shown in premise number two that the National Labor Relations Act does not specifically preclude the Federal courts from taking jurisdiction, but instead confers jurisdiction on the Board only in those instances which are set out in the ACT in its amending qualities to the previous Wagner Act.

III.

Every Element and Requisite of Jurisdiction in the Federal Court Is Present.

It has already been set out that every requisite element for Declaratory Relief exists in this case. The Declaratory Judgment Act sets out that in order to obtain this remedy in the Federal Courts the petitioners must still show all the requisites of jurisdiction necessary in any other action before the court. Thus, in cases involving the interpretation of a Federal Statute, or a Federal question, the showing of the presence of a disputed monetary amount is also required, to wit: "Three Thousand Dollars ($3,000.00)." The presence of the interpretation of a Federal Statute, and the like presence of a Federal question, has been shown and is obvious. It remains, then, only to show whether or not this is a case in which the specified amount is required and, if it is, does such an amount exist here?

Before proceeding with a "yes" or "no" answer to this premise, appellants would like to call to the attention of the court again the source and derivation of the jurisdictional power of the Federal Courts sitting in equity.

> ". . . Equity jurisdiction, of course, is a basis for action of realm of power dependent upon chancery precedents of long standing and to which recourse must still be had to determine whether any relief can be granted in a particular situation. There can be no question, however, under the phrasing of the constitutional provision as to judicial power and the

language of the congressional grant of jurisdiction to the district courts, that they have such jurisdiction or power; and, when they decline requested relief of an equitable nature, it is not for want of power but because the facts or equity precedents do not warrant it."

Vol. 1, Cyc. of Federal Procedure, Sec. 133 at p. 325.

Now we find that from time to time the courts have been presented with cases in which there is no direct monetary dispute involved, but which will result in extended litigation and in which the legal remedy is inadequate, and from which resulting irreparable damages can readily be foreseen. From these types of cases there has arisen considerable precent for allowing jurisdiction in certain cases, in exercise of the court's discretion, to prevent the results enumerated above. The majority of these types of cases have been injunctions, habeas corpus cases, divorce or matrimonial causes affecting *personal status,* and other equitable matters. It is readily apparent that these classes of cases have been accepted by and under the exercise of the sound discretion of the court, and *not from any absolute ascertaining of the existence of a monetary amount.* For reference to cases of this nature, the court is referred to *DeKrafft v. Barney,* 17 L. Ed. 350; *Bowman v. Bowman,* 30 Fed. 849, and *Stone v. Christensen,* 36 Fed. Supp. 739. IT IS IMPORTANT TO NOTE THAT THE REQUISITE JURISDICTIONAL AMOUNT IS NOT WAIVED IN THESE CASES, BUT DUE TO THE NATURE OF THE CASE, THE DECLARATION

OF THE RIGHT IS CONCEDED TO BE WORTH THAT REQUISITE AND MORE.

That reasoning may so very well be applied to the facts at hand. It is easy to see that a controversy involving sums in excess of the jurisdictional amount is in controversy here. While perhaps difficult to ascertain in precise dollars and cents, it is readily seen from examination of the Taft-Hartley Act that if the appellants are forced into execution of this contract in issue, said appellants, and each of them, will be in violation of that Act. The resultant claims of injured employees, the potential prosecution by the National Labor Relations Board itself, and the cost of such litigation, PLUS THE LOSS INCURRED BY EXERCISE OF ECONOMIC PRESSURE EXERCISED BY THE RESPONDENT UNIONS, will in each individual case amount to much more than the jurisdictional amount in issue. Petitioners would refer the court once again to Vol. 1, Cyc. of Federal Procedure, Section 143, at page 343, and to these words:

> *"The amount in controversy in any case depends upon the nature of the particular case.* In many cases, particularly with respect to liquidated demands, the amount is obvious; in others, it is difficult of determination, either by reason of the nature of the relief sought or inherent uncertainty in terms of money as to the effect any judgment entered will have, as in the case of injunction suits to protect rights from invasion. The test laid down in an early case by Chief Justice Ellsworth that *'where*

> *the law gives no rule, the demand of the plaintiff must furnish one;* but where the law gives the rule, the legal cause of action, and not the plaintiff's demand, must be regarded' is helpful, but by no means a complete guide. It comes down merely to stating that if the amount in controversy or *value of property or rights* involved is obvious or such as to be ascertainable as a matter of law, jurisdiction will be determined on that basis without regard to plaintiff's allegations that more than $3,000.00 is involved *until the contrary appears."* (Emphasis added.)

It cannot be reasonably said that the *contrary* appears here, and certainly the respondents have not shown that it is so, which the burden is upon them so to do if they can. Appellants submit then that this is a case, by its nature, which does not require the showing of a monetary amount to invoke the jurisdiction of the Federal Courts, and further submit that even if such requisite amount should appear to be necessary, that the presence of such amount in controversy is incontrovertibly shown.

IV.

There Is Certain Inherent Jurisdiction, Even in This Court of Delegated Powers, and Petitioners Present a Case Within the Scope of That Inherent Jurisdiction.

It is often argued, and was so argued by the eminent Justice of the District Court at the hearing of the Motion to Dismiss in the present case, that the Federal Courts are without any vestige of inherent jurisdiction. It is submitted that such is not true, that such was not intended to be true, and that such could not be true and be in keeping with the tradition and policy of the courts of these United States. It is true that Congress has delegated certain fields to the Federal Courts, and in certain instances have specifically set forth just what jurisdiction the Federal Courts may take. BUT THOSE INSTANCES ARE CONFINED TO THE SPECIFICATIONS OF THE PARTICULAR ACT OR STATUTE SETTING THEM FORTH, AND NOT TO THE ENTIRE JURISDICTION OF THE COURTS.

By the prior showing herein set forth, petitioners have shown that this action, being one of "Declaratory Relief," is, by nature of the case, equitable. Being such an action, it can hardly be argued that there are not certain *inherent* qualities of jurisdiction existing within the District Court. In light of some of the prior cases discussing the question of inherent jurisdiction in the Federal Courts, these petitioners question the reasonableness of any argument that such jurisdiction does not exist. Limited in its scope, yes,

but a nullity, NO. In discussing the jurisdiction of the Federal Courts, Volume 1, Cyc. of Federal Procedure, Section 62, pages 115-116, uses the following language:

> ". . . The jurisdiction of all Federal courts is limited to that which is specially conferred on them, and they are not possessed of the powers inherent in courts existing by prescription or by the common law. NEVERTHELESS, THEY ARE NOT INFERIOR COURTS IN THE GENERAL SENSE, AND WITHIN THEIR LIMITATIONS ARE COURTS OF GENERAL JURISDICTION, AND BEYOND THEIR LIMITED EXPRESS POWER AND JURISDICTION THE FEDERAL COURTS HAVE SUCH INHERENT OR IMPLIED POWERS AS PERTAIN TO THEIR CHARACTER AND GENERAL JURISDICTION AS LIMITED."

The language from the following case is in complete support of the above citation:

> "As we have already seen, and as has been many times declared by this court, the equitable powers of the courts of the United States, sitting as courts of law, over their own process, to prevent abuse, oppression, and injustice, are inherent, and as extensive and efficient as may be required by the necessity for their exercise, and may be invoked by strangers to the litigation as incident to the jurisdiction already vested, without regard to the citizenship of the complaining and intervening party."

Now it is apparent to these appellants, as to the court, that the above case is a case especially concerning "process." (*Pueblo de Taos v. Archuleta et al.*, 64 F. 2d

807, 813.) However, it cannot be reasonably construed that the word "inherent" is meant to apply only to "process," or that such a case is the only time when the Federal Court sitting in equity, in the sound exercise of its discretion, may use its *inherent power*. To the contrary, it must follow, that such inherent power is meant to say exactly what the Honorable Court has said in the above cited case, to wit:

> "That the power is to be exercised to prevent abuse, injustice, oppression, and violation of Federal Statutes, and when it is shown that the remedy at law is inadequate, that irreparable damages will result, and that property interests will be violently and unjustly affected, then, in the sound discretion of the court, it will exercise this inherent power to the prevention of these oppressive and unjust acts."

As to what will constitute such a case depends on the peculiar facts of the individual case, and it is respectfully submitted, that over and above the jurisdictional facts previously set forth, this constitutes a vital factor in the matter here under consideration, and is one additional reason why the court should exercise jurisdiction in this case. Always before the people of this country, and the Justices of this Nation's courts, should remain this maxim: "EQUITY ADMITS OF NO WRONG WITHOUT A REMEDY." Unless our judicial system continues to be founded on this unimpeachable maxim of equity, then there is little hope for the statutory-ensnared citizen of our Nation.

Conclusion.

Petitioners have shown that in fact there was NO remedy before the National Labor Relations Board in this matter, and that an attempt to persuade the Board to confer jurisdiction on the matter was met with rebuff; that this is an action for Declaratory Relief and, as such, in this particular situation an action of equity, and an action NOT specifically precluded from the court by the National Labor Relations Act conferring jurisdiction on the Board in specific instances; that every element of jurisdiction required by the Federal Courts is present in the matter, and that further, certain of these elements are not requisites in this particular case, and that the Federal Courts have certain inherent jurisdiction, which is applicable to situations of this type, and which should be exercised for the maintenance of the repute of the court in the eyes of the Nation's citizenry, and which has been so often exercised in similar instances of oppression in the past.

Since the employer is in the position whereby a right of action for civil damages will accrue to each individual employee whether or not the contract in question is signed, and whether or not an action could be prosecuted through the "Board," it follows that Declaratory Relief is the only remedy, and that this is the only proper court to hear and give such remedy.

It is respectfully submitted that no appellant was ever more justifiably before this court, that no appellant has been better qualified for the exercise of this court's jurisdictional qualities, and that such requisite elements of jurisdiction has been established beyond any reasonable doubt.

J. WESLEY CUPP,
Attorney for Appellants.